REMARKS

The Examiner has rejected claims 1-2, 4-7 and 9-10 under 35 U.S.C. §103(a) as being unpatentable over the German reference to Schabsky 1,103,811 ("Schabsky") in view of U.S. Patent No. 5,701,688 to Crowley ("Crowley"). During an Examiner's Interview on June 11, 2002, the Examiner further rejected claim 1 under 35 U.S.C. §102 as being anticipated and under 35 U.S.C. §103(a) as being obvious by U.S. Patent No. 5,513,450 to Palazzo ("Palazzo"), U.S. Patent No. 2,988,829 to Johnsen ("Johnsen"), and U.S. Patent No. 3,178,836 to Turner ("Turner"). Based on the foregoing amendments following remarks, Applicant submits that all pending claims, namely claims 1-10 and 24, are allowable over all of these references.

Applicant's invention requires, and is claimed in claim 1, all of the following: a vamp of an upper extending from a toe region to an instep region and consisting essentially of a single unit; a liner positioned beneath the instep portion and consisting of a single piece; and an elastic instep guard positioned between the instep portion and the liner to protect a metatarsal section of the foot, the instep guard including an elastic support having a plurality of hollow passages and extending from the toe region to the instep region of the vamp.

Applicant's claim 24 requires the following: a vamp of an upper extending from a toe portion to an instep portion; a liner positioned beneath the instep portion; a steel toe positioned beneath the toe portion; an elastic guard positioned between the instep portion and the liner and including a plurality of hollow passages; and the elastic instep guard is in contact with the steel toe and extends from the steel toe toward the instep portion for providing continuous protection to the foot.

Moreover, claim 1 provides a simpler shoe construction consisting essentially of a one unit vamp, a one piece liner, and an elastic instep guard. This simpler shoe having fewer pieces and material than Schabsky, which requires additional and more complex pieces, such as a cushion and a tongue made up of multiple pieces, as shown in Schabsky's figure 1. Schabsky requires a cushion because its molding plate is made of steel or plastic and is uncomfortable to a user and a cushion lessens the discomfort of a steel or plastic guard on top of the toes. Schabsky's tongue is also shown to have two pieces for connecting a distance between the molding plate and the steel toe and these two pieces are then connected to another set of two pieces that contain the molding plate. Hence, Schabsky's tongue has at least 4 pieces of material as compared to Applicant's single unit vamp and single unit liner. Applicant's invention needs only a single unit vamp and a single unit liner because the elastic instep guard is connected with and extends from the steel toe toward the instep portion away from the toe region. Schabsky, because the steel guard is spaced apart from the steel toe, needs a pocket to prevent the guard from floating about. Hence, two pieces of material surround the steel guard to fix its position relative to the steel toe and these two pieces are connected to another set of two pieces that surround the steel toe. Therefore, Schabsky cannot be of the simple construction that is claimed in Applicant's claim 1 and cannot provide continuous protection, because there is a gap between the steel guard and steel toe, to the toe region as claimed in Applicant's claim 24, where the elastic instep guard connects to and extends from the steel toe.

No reference or combination of references disclose, teach, or suggest a simple construction of a protective footwear consisting essentially of a single unit vamp, a single piece liner, and an elastic guard positioned between the instep portion and the liner, where the guard includes an elastic support having a plurality of hollow passages and negates a need for a cushion. Also, no reference or combination of references disclose, teach, or suggest the elastic guard in contact with and extending from a steel toe for providing continuous protection to the foot.

Crowley relates to a shoelace cover and requires the cover to be located on top of the shoelaces. Hence, the cover is not positioned between the instep portion and the liner but is located on top of the instep portion. Also, the guard is not in contact with and extends from a steel toe toward an instep portion for providing continuous protection to the foot.

Both Turner and Johnsen require the guard to be of a steel or rigid material and without a plurality of hollow passages. This differs from Applicant's elastic guard made of a plurality of hollow passages. Moreover, Turner positions the guard on top of an arch plate and not between the instep portion of the vamp and the liner. Also, Johnsen differs in that its guard is between the steel toe and the outer portion of the upper. Further, neither reference suggests the simple construction of Applicant's protective footwear without a need for a cushion or that the elastic guard is in contact with and extends from a steel toe for providing continuous protection to the foot.

Palazzo relates to a soccer boot and is not a guard to be inserted between a liner and an instep portion of a shoe. Moreover, Palazzo requires a boot that extends up

toward the shin area, which is beyond the simple construction of Applicant's invention directed to the metatarsal region of the foot.

The above references do not disclose, teach, or suggest a simple construction of a protective footwear consisting essentially of a single unit vamp, a single piece liner, and an elastic guard positioned between the instep portion and the liner, where the guard includes an elastic support having a plurality of hollow passages and negates a need for a cushion. Also, the above references do not disclose, teach, or suggest the elastic guard in contact with and extending from a steel toe for providing continuous protection to the foot. Moreover, the above references do not disclose, teach, or suggest a guard positioned between the liner and instep portion, where the guard is of an elastic material and having a plurality of hollow passages. Because no reference or combination of references disclose, teach, or suggest all the elements of Applicant's claimed invention, the claims are allowable over the cited references.

Additionally, Applicant respectfully submits that modifying the prior art to arrive at Applicant's invention would not be proper. Before a modification of a reference can be made in a rejection under 35 U.S.C. §103, some motivation for the artisan to make the modification must be shown. None of the references provide any reason or logic for a simple construction of a protective footwear consisting essentially of a single unit vamp, a single piece liner, and an elastic guard positioned between the instep portion and the liner, where the guard includes an elastic support having a plurality of hollow passages and negates a need for a cushion. Also, no reference or combination of references teaches or suggests the elastic guard is in contact with and extends from a steel toe for providing continuous protection to the foot. Moreover, no reference

provides any reason or logic for an elastic guard having a plurality of hollow passages. The person of ordinary skill in the art does not have the current application in front of him/her when considering modifications. Hence, there is no reason why one skilled in the art would modify the prior art to arrive at the claimed invention.

For the foregoing reasons, Applicant respectfully submits that all pending claims are patentable over the references of record.

Respectfully submitted,

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